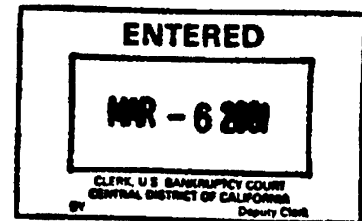
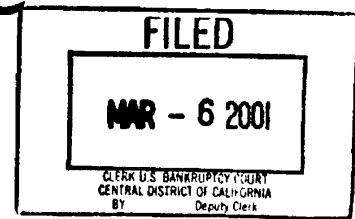


FOR PUBLICATION

ORIGINAL



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re
MOHAMMAD & KAUSAR AKRAM,
Debtors.

Case No. LA 00-42035-KM

Chapter 13

OPINION RE ORDERS GRANTING
LAM MOTIONS IN PART AND
DENYING LAM MOTIONS IN PART

Date: January 17, 2001

Time: 3:00 a.m.

Place: Courtroom 1468

I. Issue Presented

In a "Chapter 20" situation (chapter 7 case followed by a chapter 13 case),¹ where debtors receive a chapter 7 discharge, and

¹ Filing a chapter 7 petition followed by a chapter 13 petition is commonly referred to as a "Chapter 20." The United States Supreme Court has specifically held that there is no *per se* prohibition against Chapter 20 filings. Johnson v. Home State Bank, 501 U.S. 78 (1991). However, the filing of multiple bankruptcies is one indicia of bad faith. In re Huerta, 137 B.R. 356, 367 - 68 (Bankr. C.D. Cal. 1992) (serial chapter 13s) (citing In re Nash, 765 F.2d 1410, 1415 (9th Cir. 1985)).

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1 then file a chapter 13 case, and successfully move to have the
2 completely "underwater"² junior secured creditors lien-stripped
3 pursuant to Lam³ such that the Court grants the Lam motion to the
4 extent of valuing that creditor's secured claim as zero for chapter
5 13 plan purposes, should the creditor's general unsecured claim
6 under the chapter 13 plan be the full balance owed the creditor
7 pursuant to its Note, or should the general unsecured claim for
8 that creditor under the chapter 13 plan be zero because of the
9 prior chapter 7 discharge?

10 Stated more succinctly, does a discharge in a prior chapter 7
11 case entitle debtors, in a subsequent chapter 13 case, to not only
12 "Lam-strip" a completely underwater junior deed of trust holder's
13 secured claim to zero secured, for chapter 13 plan purposes, but to
14 value that "Lam-stripped" creditor's general unsecured claim as
15 **zero**, for chapter 13 plan purposes, as well?

16 **II. Facts Relevant to Issue**

17 Mohammad and Kausar Akram ("Debtors") filed a voluntary
18 chapter 7 petition on July 5, 2000. The chapter 7 trustee filed a
19 no asset report on September 26, 2000 and the Debtors received a
20 chapter 7 discharge on October 16, 2000. Thereafter, on November
21 15, 2000 Debtors filed a chapter 13 petition. Debtors scheduled a
22 single family residence in Los Angeles with a claimed fair market
23 value of \$145,000, encumbered by three deeds of trust. The
24

25 ² See infra, section IV for a definition of "underwater."

26 ³ Lam v. Investors Thrift (In re Lam), 211 B.R. 36 (9th
27 Cir. BAP 1997), appeal dismissed, 192 F.3d 1309 (9th
28 Cir. 1999). See infra, section IV, for a detailed
discussion of Lam.

1 beneficiary under the first deed of trust was World Savings & Loan
2 Association. World Savings & Loan filed a proof of secured claim
3 for \$149,523.54. The beneficiary under the second deed of trust
4 was Advanta Mortgage Corporation (hereinafter "Advanta"). Advanta
5 filed a proof of secured claim for \$73,906.98. The beneficiary
6 under the third deed of trust was Household Finance Corporation
7 (hereinafter "Household"). Pursuant to an account balance letter
8 to Debtors dated 12/8/00, Household had a \$43,339.19 secured claim.
9 In addition to these secured claims, Debtors scheduled \$6,250.95 of
10 general unsecured debts.

11 On December 20, 2000, Debtors filed motions to "lien-strip"⁴
12 the second and third deeds of trusts (both secured only by liens on
13 Debtors' principle residence), pursuant to Lam.⁵ Debtors' motions
14 were supported by the Debtors' declarations, copies of the deeds of
15 trusts, proofs of claims, and an account balance letter from
16 Household. The Debtors also provided a declaration from a real
17 estate appraiser opining that the fair market value of their
18 residence was \$145,000.

19 At the hearing held January 17, 2001, this Court held that
20 pursuant to Lam, the Debtors were entitled to "Lam-strip" the
21 Advanta and Household deeds of trusts, thereby valuing the **secured**
22 claims of Advanta and Household as zero for chapter 13 plan
23 purposes, but subject to the *res judicata* limitations of In re 1441
24 Veteran Street Co., 144 F.3d 1288 (9th Cir. 1998).

25

26 ⁴ Debtors' motions were titled "Motion to Extinguish Lien
27 of"

28 ⁵ See supra, footnote 2.

1 In In re 1441 Veteran Street Co., the Ninth Circuit Court of
2 Appeals held that an 11 U.S.C. § 506(a) secured/unsecured
3 bifurcation and reduction of secured claim to available collateral
4 value is done only for a specific purpose (in that case, for
5 purposes of a chapter 11 plan), and that this bifurcation and
6 reduction of the amount of the secured claim to the value of the
7 collateral available to satisfy that claim (after paying any senior
8 liens in full) has no *res judicata* effect unless the plan is
9 confirmed.⁶ In chapter 11 cases, the chapter 11 plan usually
10 provides that the debtor receives a discharge at or soon after
11 confirmation. However, in chapter 13 cases, the chapter 13 debtor
12 does not receive a discharge unless the chapter 13 debtor not only
13 confirms, but also completely performs,⁷ the chapter 13 plan.
14 Translating what In re 1441 Veteran Street Co. states regarding *res*
15 *judicata* effect to the chapter 13 context would mean that a lien
16 strip for chapter 13 plan purposes should have no *res judicata*
17 effect unless the chapter 13 debtor confirms a chapter 13 plan, and
18 receives a discharge in his/her bankruptcy case.

19 Thus, in granting the Lam-strip, this Court ruled that if
20 Debtors' chapter 13 plan was not confirmed, or if Debtors confirmed
21 a plan but failed to obtain a discharge, and the Lam-stripped
22 creditors later go back to foreclosing pursuant to state law, the
23

24 ⁶ In re 1441 Veteran Street Co., 144 F.3d at 1291 - 92.

25 ⁷ A chapter 13 debtor who confirms a chapter 13 plan but
26 fails to completely perform that plan may be eligible,
27 on motion, to receive a "hardship" discharge, but that
28 hardship discharge is not the "superdischarge" of
chapter 13, it is the lesser discharge an eligible
debtor may obtain in a chapter 7 case.

1 chapter 13 Lam-stripped valuation of zero secured would have no res
2 *judicata* effect. The secured claim would be the whole amount owed
3 pursuant to the Note and the creditor would be able to foreclose as
4 allowed by state law unless the debtor pays the full arrearage on
5 the loan (if paid more than 5 days before the foreclosure sale), or
6 pays the whole amount owed pursuant to the Note (if within 5 days
7 of the foreclosure sale).⁸

8 At the hearing, this Court further ruled that for chapter 13
9 plan⁹ purposes, the Advanta and Household claims should be treated
10 as general unsecured claim in the amount of the present balance
11 owed to each of these Lam-stripped creditors pursuant to their
12 secured Notes, as of the date the Lam motions were granted.

13 Debtors' counsel agreed with the ruling as to the zero secured
14 claims, but disagreed with the Court's ruling on the amount of the
15 general unsecured claims for Chapter 13 plan purposes. Debtors'
16 counsel argued that the chapter 7 case had discharged Debtors' in
17 *personam* liability, and that as a result, when the creditors' liens
18 were stripped pursuant to Lam, the creditors held no unsecured
19 claim whatsoever. Therefore, argued Debtors' counsel, the Lam-
20 stripped creditors should be treated as \$0 secured, and \$0 general
21 unsecured, for chapter 13 plan purposes.

22
23 ⁸ Under state law, Cal. Civ. Code § 2924c(e).

24 ⁹ Debtors' original chapter 13 plan proposed paying 0% to
25 the unsecured creditors (not including Advanta and
26 Household). The Debtors then amended their plan to
27 provide 100% to the general unsecured creditors (not
28 including Advanta and Household). After the Court's
ruling at the hearing on the issue presented herein,
the Debtors amended their plan to provide 8% to the
general unsecured creditors, including Advanta and
Household.

1 At this Court's request, Debtors' counsel briefed the question
2 of whether the general unsecured claims of the Lam-stripped junior
3 lienholder for chapter 13 plan purposes, in the chapter 20
4 situation, was \$0, or was the whole balance owed to the creditor
5 pursuant to its Note as of the date the Lam motion was granted. In
6 the supplemental briefing, Debtors' counsel argued: (1) the chapter
7 7 discharge, pursuant to 11 U.S.C. § 524, discharged/forgave/took
8 away the right to enforce all unsecured claims and therefore only
9 secured claims survived the chapter 7 discharge; (2) the effect of
10 Lam is to reduce the underwater junior secured creditors' claims to
11 zero for chapter 13 plan purposes; and (3) the joint effect of the
12 chapter 7 discharge plus the Lam lien-strip is that an underwater
13 junior secured creditor has a secured claim of zero for chapter 13
14 plan purposes, and has no unsecured claim at all, because any
15 unsecured claim was already discharged in the chapter 7 case.

16 **III. Holding**

17 This Court rejects Debtors' invitation to make flawed
18 decisional law even worse for creditors. This Court has published
19 an article¹⁰ pointing out the various ways the BAP Lam decision is
20 flawed, particularly because Lam did not place the restrictions on
21 res judicata effect which are required by the reasoning of the
22 Ninth Circuit in In re 1441 Veteran Street Co.¹¹ However, this
23 Court recognizes that BAP decisions are highly authoritative

24

25 ¹⁰ Kathleen P. March and Jennifer Hildebrandt, *Lien*
26 *Stripping: When You Can and When You Can't - The Law*
27 *Now and What the Future May Hold*, 24 Cal. Bankr. J. 317
 (1998).

28 ¹¹ See supra, footnote 5.

1 (though not binding) and that uniformity of bankruptcy judges'
2 decisions throughout the Circuit has benefits. Therefore, this
3 Court grants Lam motions, but with the restrictions on *res judicata*
4 effect required by the reasoning of the Ninth Circuit in In re 1441
5 Veteran Street.¹²

6 However, this Court declines Debtors' request to **extend** Lam to
7 reach a result even more damaging to creditors than the result the
8 BAP reached in Lam, by not only eliminating Lam-stripped creditors'
9 secured claims for chapter 13 plan purposes, but by also depriving
10 Lam-stripped creditors of having a general unsecured claim in the
11 chapter 13 case.

12 Therefore, that portion of Debtors' Lam motions moving this
13 Court to value the Lam-stripped creditors' secured claims as zero
14 for chapter 13 plan purposes is granted, with the restrictions
15 required by In re 1441 Veteran Street Co.;¹³ but, that portion of
16 Debtors' motions requesting this Court to value the creditors'
17 general unsecured claims as zero for chapter 13 plan purposes is
18 denied.

19 **IV. Discussion**

20 The effect of the discharge that an eligible debtor receives
21 in chapter 7 is codified at 11 U.S.C. § 524. Section 524
22 eliminates the debtor's *in personam* liabilities: "[the discharge]
23 voids any judgment, at any time obtained, to the extent that such
24 judgment is a determination of the personal liability of the debtor
25 with respect to any debt discharged . . . [and] operates as an

26
27 ¹² Id.

28 ¹³ Id.

1 injunction against the commencement or continuation of any action .
2 . . . to collect . . . any [discharged] debt as the personal
3 liability of the debtor. . . ." ¹⁴ For those debtors eligible ¹⁵ to
4 receive a discharge in a chapter 7 case, the section 524 discharge
5 permanently bars prepetition debts so discharged from being
6 enforced as the *in personam* liability of the debtor. However,
7 section 524 does not affect, remove or discharge an *in rem*
8 liability of property for debts. ¹⁶ This means that liens on
9 property are not eliminated by the discharge. ¹⁷ Rather, liens

11 ¹⁴ 11 U.S.C. §§ 524(a)(1), (2). See also, Cennamo v.
12 United States (In re Cennamo), 147 B.R. 540 (Bankr.
13 C.D. Cal. 1992) (holding that bankruptcy discharge
14 operates only as a discharge of debtor's *in personam*
15 tax liability, not debtor's *in rem* tax liability);
16 accord In re Isom, 901 F. 2d 744 (9th Cir. 1988); see
17 also, Hagemann v. The Chemical Mort. Co. (In re
18 Hagemann), 86 B.R. 125 (Bankr. N.D. Ohio 1988) (holding
19 that discharged debtor is protected only from *in*
20 *personam* liability, not *in rem* liability on lien given
21 as security for mortgage loan); accord Chandler Bank of
22 Lyons v. Ray, 804 F. 2d 577 (10th Cir. 1986); Schroeder
23 v. First Union Nat. Bank of Virginia, 182 B.R. 723 (D.
24 Md. 1995); Stewart v. Underwood, 704 P. 2d 275 (Ariz.
App. 1985) (holding that effect of discharge of debt
under Bankruptcy Code is the same as it was under the
1898 Bankruptcy Act; it is not an extinguishment of
the debt, but only a bar to enforcement of the debt as
a personal obligation of the debtor).

22 ¹⁵ Of course, many debtors (e.g., corporations or
23 partnerships) are not eligible to receive any discharge
24 whatsoever in Chapter 7, though corporations and
partnerships may be eligible to receive a discharge in
Chapter 11.

25 ¹⁶ See supra, footnotes 12 and 13.

26 ¹⁷ Id. See also, In re Thompson, 182 B.R. 140 (Bankr.
27 E.D. Va. 1995) (holding that unless security interest
or lien is avoided, bankruptcy discharge has little, if
28 any, impact on creditor's ability to proceed *in rem*
against property securing claim).

1 remain on the property (or as the U.S. Supreme Court likes to put
2 it, "liens ride through bankruptcy").¹⁸

3 Because debtors cannot get rid of liens "free" via the
4 discharge, they seek to accomplish the next best thing, which is to
5 force a creditor to remove its lien on property by paying the
6 creditor holding the lien as little as possible. "Lien-stripping"
7 allows debtors to do this, by reducing the dollar amount of the
8 secured claim to the value of the collateral available to satisfy
9 that claim, and by treating the remainder owed as a general
10 unsecured claim.¹⁹ Though the secured claim will have to be paid
11 in full, the debtor can usually discharge the general unsecured
12 (deficiency) claim by paying that claim only a few cents on the
13 dollar, or maybe even paying zero on that claim.

14 The United States Supreme Court has specifically held that
15 lien-stripping is not allowed in chapter 7.²⁰ Dewsnup held that in
16 chapter 7, 11 U.S.C. § 506, despite its language, does not allow a
17 debtor to strip a lien that secures an allowed claim under 11
18 U.S.C. § 502, even "when the value of the collateral is less than
19 the amount of the claim secured by the lien."²¹ The United States

20 ¹⁸ Dewsnup v. Timm, 502 U.S. 410 (1992); Johnson v. Home
21 State Bank, 501 U.S. 78 (1991).

22 ¹⁹ Section 506(a) allows debtors to bifurcate claims into
23 secured and unsecured claims based on the value of the
collateral securing the claim

24 ²⁰ Dewsnup v. Timm, 502 U.S. 410 (1992).

25 ²¹ Id. at 412, 417. The Supreme Court indicated that,
26 given the ambiguity in §§ 506(a) and 506(d), the Court
27 was not convinced that Congress intended "to depart
28 from the pre-Code rule that liens pass through
bankruptcy unaffected." Id. at 417. "[T]o attribute
to Congress the intention to grant a Debtor the broad

1 Supreme Court reasoned that an underlying principle of bankruptcy
2 is that "a lien on real property pass[es] through [bankruptcy]
3 unaffected."²²

4 In chapter 13, 11 U.S.C. § 1322(b)(2) allows a debtor to
5 "modify the rights of holders of secured claims, other than a claim
6 secured only by a security interest in real property that is the
7 debtor's principal residence." In Nobelman v. American Savings
8 Bank, 508 U.S. 324 (1993), the United States Supreme Court held
9 that 11 U.S.C. § 1322(b)(2) prohibits the removal or "strip off" of
10 the unsecured portion of an undersecured claim from a chapter 13
11 debtor's principal residence. However, the Nobelman decision did
12 not expressly address liens that are completely underwater (i.e.,
13 those liens that are completely unsecured because all available
14 equity in the collateral securing those loans is consumed by senior
15 liens).

16 The U.S. Supreme Court's failure to expressly mention
17

18 new remedy against allowed claims to the extent they
19 become 'unsecured' for purposes of § 506(a) without the
20 new remedy's being mentioned somewhere in the Code
21 itself or in the annals of Congress is not plausible,
22 in our view, and is contrary to basic bankruptcy
23 principles." Id. at 420. Note that because the
24 Supreme Court stated that lien stripping would not be
25 permitted in chapter 7 with an "allowed claim," the
26 implication arises that if the claim becomes
27 disallowed, the lien can be stripped under Section
28 506(d).

22 Id. at 418 (stating that the "liens ride through"
23 principle was established before the passage of the
24 1978 Act, and existed under the Bankruptcy Act of
25 1898). The Supreme Court acknowledged that liens ride
26 through bankruptcy in several cases. See Long v.
27 Bullard, 117 U.S. 617 (1886). Farrey v. Sanderfoot,
28 500 U.S. 291 (1991); Johnson v. Home State Bank, 501
U.S. 78 (1991).

1 completely underwater liens in Nobelman paved the way for
2 conflicting lower court decisions as to what treatment section
3 1322(b)(2) permitted for completely underwater principal residence
4 secured claims in chapter 13 cases. Some courts have held that a
5 wholly "unsecured" lien may not be "stripped down" into an
6 unsecured claim.²³ The Ninth Circuit BAP, in Lam, has held to the
7 contrary, allowing a completely underwater lien on a Chapter 13
8 debtor's principal residence to be stripped and avoided, despite
9 the antimodification language of section 1322(b)(2).²⁴ In Lam, the
10 BAP held that the section 1322(b)(2) antimodification provision
11 does not prohibit modifying a claim secured only by a lien on
12 debtor's principal residence, so long as that lien is completely
13 "unsecured," because all available equity in the collateral is
14 consumed up by senior liens.²⁵ The BAP reversed the bankruptcy
15 court's refusal to lien strip, and remanded, directing the
16 bankruptcy court to issue a judgment declaring the stripped lien to

20 ²³ In re Shandrew, 210 B.R. 829 (Bankr. E.D. Cal. 1997)
21 (holding that a wholly unsecured junior mortgage on
22 Chapter 13 debtor's residence could not be stripped
23 down into an unsecured claim by debtor's plan); accord
24 In re Neverla, 194 B.R. 547 (Bankr. W.D.N.Y. 1996); In
25 re Jones, 201 B.R. 371 (Bankr. D.N.J. 1996); In re
26 Tanner, 223 B.R. 379 (Bankr. M.D. Fla. 1998).

24 ²⁴ Lam v. Investors Thrift, 211 B.R. 36 (9th Cir. B.A.P.
25 1997), appeal dismissed, 192 F.3d 1309 (9th Cir. 1999).

26 ²⁵ Id. at 41. See also, In re Plouffe, 157 B.R. 198
27 (Bankr. D. Conn. 1993) (holding that a wholly unsecured
28 junior mortgage lien can be avoided under Nobelman);
accord In re Sanders, 202 B.R. 986 (Bankr. D. Neb.
1996).

1 be void.²⁶

2 Lam was appealed to the Ninth Circuit. However, the Ninth
3 Circuit failed to reach the merits of the Lam issue, instead
4 dismissing the appeal because of the creditor's failure to appear
5 in any prior proceedings or properly move to have the default
6 vacated.²⁷ The Ninth Circuit Court of Appeals has never, to date,
7 ruled on the merits on the Lam issue. However, several other
8 Circuit courts, plus the First Circuit BAP, have recently followed
9 Lam, allowing Lam type lien-stripping in chapter 13 cases of
10 completely underwater junior lienholders, even though these
11 lienholders are secured only by liens on the debtor's principal
12 residence.²⁸

13 Lam, and the Circuit cases adopting the Lam reasoning, allow
14 chapter 13 debtors to modify the completely underwater claims of
15 creditors (secured only by the debtor's primary residence) into a
16 secured claim of zero, and a general unsecured claim in the full
17 amount of the previously secured claim. The general unsecured
18

19 ²⁶ Lam, 211 B.R. at 41 - 42. Note that pursuant to the
20 reasoning later articulated by the Ninth Circuit Court
21 of Appeals in In re 1441 Veteran Street Co., 144 F.3d
22 1288 (9th Cir. 1998), the BAP Lam decision should not
23 have voided the lien forever and without restriction.
24 Rather, pursuant to the reasoning of 1441 Veteran
25 Street Co., the BAP should have placed the limitation
26 on voiding the lien that if the plan is not confirmed
27 and fully performed, the 506(a) valuation would have no
28 *res judicata* effect. But, the BAP did not place any
such limitation on the voiding of the lien.

25 ²⁷ Lam, 211 B.R. at 1310 (9th Cir. 1999).

26 ²⁸ In re Bartee, 212 F.3d 377 (5th Cir. 2000); In re
27 McDonald, 205 F.3d 606 (3d Cir. 2000); In re Tanner,
28 217 F.3d 1357 (11th Cir. 2000); In re Mann, 249 B.R.
831 (1st Cir. BAP 2000).

1 claim of the Lam-stripped creditor is generally placed in the
2 chapter 13 plan in the same class as all other general unsecured
3 claims. Though some bankruptcy level decisions outside the Ninth
4 Circuit have refused to confirm "zero percent" chapter 13 plans,
5 debtors in the Ninth Circuit often confirm chapter 13 plans that
6 pay zero, or pennies on the dollar, to the class of general
7 unsecured creditors, where zero percent or a low percent to general
8 unsecured creditors constitutes the debtor's best efforts.²⁹

9 However, neither Lam nor the cases from other Circuits
10 addressed or allowed the result moved for here: that a Lam-stripped
11 claim should be valued, for chapter 13 plan purposes, not only as a
12 secured claim of zero, but also as a general unsecured claim of
13 zero, where the debtor previously received a chapter 7 discharge.
14 In fact, neither movant, nor this Court, found any reported case
15 authorizing the result here moved for, or even ruling on this
16 "Chapter 20" twist to Lam motions.³⁰

18 ²⁹ See Downey Sav. & Loan Ass'n v. Metz (In the Matter of
19 Metz), 820 F.2d 1495, 1498 (9th Cir. 1987) ("[t]he fact
20 that Metz's plan provides for no payment to unsecured
21 creditors is not sufficient to conclude that the plan
22 was submitted in bad faith."). Accord, Flygare v.
23 Boulden, 709 F.2d 1344, 1348 (10th Cir. 1983) (no per
24 se minimum payment requirement); Barnes v. Whelan, 689
25 F.2d 193, 198 (D.C. Cir. 1982) (chapter 13 requires no
26 minimum repayment as a prerequisite to confirmation).
27 But see, In re Lattimore, 69 B.R. 622, 625 (Bankr. E.D.
28 Tenn. 1987) ("a plan proposing zero payment for
unsecured claims is an abuse of the purpose and spirit
of Chapter 13"); In re Heywood, 39 B.R. 910, 911
(Bankr. W.D.N.Y. 1984) (chapter 13 plan listing only
secured debts remaining after chapter 7 discharge with
no provisions for payments to discharged unsecured
creditors is not submitted in good faith).

³⁰ In fact, only one published decision reports being
faced with a similar problem. In In re Algee, 142 B.R.

1 The binding authority most nearly on point is the holding of
2 the Supreme Court in Dewsnup v. Timm, which must be read in
3 conjunction with 11 U.S.C. § 524. As discussed supra, the Supreme
4 Court in Dewsnup held that lien stripping is **prohibited** in chapter
5 7, and "liens ride through bankruptcy" unaffected. This means that
6 even after a chapter 7 discharge, a secured debt (i.e., a debt
7 secured by a lien on real or personal property collateral), is
8 still secured in the full amount owed pursuant to the Note,
9 recorded abstract of judgment, or other secured obligation,
10 regardless of the value of the collateral securing that claim.
11 Because lien-stripping is prohibited in chapter 7, a secured claim
12 -- even if undersecured -- must be treated in the chapter 7 case as
13 being secured in the full amount owed pursuant to the Note,
14 recorded judgment, etc. Any reduction in the amount of the secured

15 _____
16 576 (Bankr. D.C. 1992), the debtor filed a motion
17 styled as "Motion to Reopen, Modify and Amend Debtor's
18 Plan to Declare Defendants are Unsecured Creditors to
19 the Extent Their Claims Exceeded the Fair Market Value
20 of Their Claimed Security on the Date of the Filing of
21 the Plan, to Cram Down Said Claims...and Motion to
22 Declare Said Debts Discharged." The debtor made two
23 arguments in Algee: Debtor argued that he had early on
24 attempted to object to the unsecured portion of claims
25 secured by debtor's principal residence as discharged
26 by virtue of his prior Chapter 7 discharge. Id. at 579.
27 Debtor also argued that his residence should be valued
28 at \$65,000.00 and the secured claims therefore valued
at \$1,000 with the rest of their claims unsecured and
treated equally with all other unsecured debt (the
general unsecured class received 0% under the plan).
Id. The Algee court declined to address the issue of
whether any general unsecured claim of the undersecured
secured creditor had been discharged in the prior
chapter 7 case or not because the debtor's chapter 13
plan was a 0% plan, which would result in no payment to
any general unsecured claim, regardless of whether or
not a general unsecured claim survived the chapter 7
discharge.

1 claim would constitute allowing lien-stripping in chapter 7, a
2 result the U.S. Supreme Court **expressly refused** to allow in Dewsnup
3 v. Timm. Therefore, in a chapter 7 case, there is no unsecured
4 portion of the secured claim owed any secured creditor.

5 The effect of the discharge given by 11 U.S.C. § 524 is not to
6 reduce the amount of the secured claim. Moreover, the section 524
7 discharge does not to split an undersecured claim into a secured
8 component and an unsecured component. Rather, the effect of the 11
9 U.S.C. § 524 discharge is to prevent the creditor from seeking to
10 collect any claim - secured or unsecured - as the personal
11 liability of the debtor.³¹ And this removal of *in personam*

12
13 ³¹ The effect of Dewsnup and section 524 is best
14 illustrated by looking at what would happen in the case
15 herein if Debtors had never filed their subsequent
16 chapter 13 case. If the senior deed of trust holder
17 foreclosed on the residence, after the chapter 7
18 discharge (assuming they were entitled to do so under
19 state law because Debtors were behind on their mortgage
20 payments), Advanta and Household would have had a right
21 (in their order of priority) to be paid any proceeds
22 from the foreclosure sale remaining after the first
23 deed of trust holder was paid in full. If the proceeds
24 left after paying the first deed of trust holder were
25 not sufficient to pay the claims of Advanta and
26 Household in full, these creditors would have no right
27 to seek to collect this deficiency from Debtors, such
28 as by suing Debtors for this deficiency, because
Debtors' personal liability for this debt would have
been discharged in the chapter 7 case. But, Advanta
and Household retained all of their rights as secured
creditors, despite the chapter 7 discharge. Therefore,
Advanta or Household could commence foreclosure
proceedings after the chapter 7 discharge, if Debtors
were behind on payments owed to these creditors, unless
the Debtors cured the default on the loan, or paid off
the whole loan, as required by state law depending on
the number of days until the foreclosure sale. See
Cal. Civ. Code § 2924c(e). And, if the Debtors'
residence increased in value, and Household and/or
Advanta foreclosed as allowed by state law, Household
and/or Advanta would have been entitled to that

1 liaiblity is the **only** effect of the section 524 discharge.

2 Applying this analysis to the case herein, the Debtors filed
3 their chapter 7 case and received a discharge. The secured claims
4 of Advanta and Household could not be, and were not, lien-stripped
5 in the chapter 7 case, because lien-stripping is prohibited in
6 chapter 7. Thus, at the end of the chapter 7 case, the Advanta and
7 Household claims were still secured claims in the full amount owed
8 to each creditor (secured claim of \$73,906.98 owed to Advanta and
9 secured claim of \$43,339.19 owed Household pursuant to their
10 Notes). These secured claims passed through the chapter 7
11 bankruptcy unaffected, except that the section 524 discharge
12 precludes all creditors, including these secured creditors, from
13 seeking to collect their claims as a personal liability of the
14 Debtors.

15 As a result, at the time debtors filed their subsequent
16 chapter 13 case, Advanta and Household each had secured claims in
17 the full amount each of these creditors was owed pursuant to the
18 secured Note held by each creditor. The only effect of the prior
19 chapter 7 discharge on the secured creditors was that the secured
20 creditors no longer had the right to collect their secured claims
21 as an in personam liability of the debtors.

22 After filing their chapter 13 case, Debtors filed motions to
23 Lam-strip the liens of Advanta and Household. The uncontroverted
24 evidence regarding fair market value of the residence, and the
25 amounts owed the first deed of trust holder, and to Advanta and
26

27 _____

28 increased value in the collateral to satisfy their
secured claims.

1 Household, established that the secured claims of Advanta and
2 Household could be lien-stripped for chapter 13 plan purposes,
3 pursuant to Lam.

4 However, because the amount of these secured claims remained
5 unaffected by the chapter 7 discharge, the "Lam-stripping" of these
6 secured claims in the chapter 13 case resulted in valuing the
7 secured claims at zero secured, for chapter 13 plan purposes, and
8 turned the full amount owed to each creditor (pursuant to that
9 creditor's Note) into a general unsecured claim, for chapter 13
10 plan purposes, i.e. a \$73,906.98 general unsecured claim for
11 Advanta for chapter 13 plan purposes, and a \$43,339.19 general
12 unsecured claim for Household for chapter 13 plan purposes.
13 Section 524 does not support Debtors' request that these unsecured
14 claims be valued at zero for chapter 13 plan purposes, due to the
15 prior chapter 7 discharge.

16 **V. Conclusion**

17 This opinion constitutes this Court's findings and fact and
18 conclusions of law with respect to this Court's Order entered this
19 same date, granting Debtors' Lam motions in part, and denying
20 Debtors' Lam motions in part, as stated herein.

21
22 Dated: March 6, 2001



KATHLEEN P. MARCH
United States Bankruptcy Judge

NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST LISTED BELOW:

1. You are hereby notified that a judgment or order entitled:

**OPINION RE ORDERS GRANTING LAM MOTIONS IN PART AND DENYING LAM
MOTIONS IN PART**

was entered on **MAR - 6 2001**

2. I hereby certify that I mailed a true copy of the order or judgment to the persons and
entities listed below on **MAR - 6 2001**

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Dated: **MAR - 6 2001**

BRUCE BARON

Clerk